1949. **File No.** O. Motor Tax 1/49

Legal Department

A BRANCH

Subject:— Opinions under the Motor Vehicles Tax Act.

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Legal Department File No. O. Motor Tax #1949.

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Bombay Motor Vehicles Tax Act, 1935

Section 9(1) Sawantwadi Municipality Levy of tolls on motor vehicles etc.

Section 9(1) of the Bombay Motor Vehicles Tax Act, 1935, provides that the Provincial Government shall pay annually to any local board which at the commencement of this Act was levying tolls on vehicles or animals and to any other local authority which at the said date was levying or collecting tolls on motor vehicles and trailers a sum determined by the Provincial Government after consulting the local board or local authority concerned, as representing the net average annual income of such local board or local authority from such tolls, after deducting the cost of collection, during the three years ending on the 31st day of March 1936, plus 10 per centum. As the Act was applied to the whole of the Bombay Province on 1st day of April 1936, the basis of determining the compensation under this provision was the net average annual income during the three years ending on 31st day of March 1936k plus 10 per centum. But this Act was applied to the Sawantwadi State area on its merger with effect from 28-7-1948 on which date the Motor Vehicles Tax Act as applied to the Sawantwadi State before its merger stood repealed. It is, therefore, apparent that unless the Sawantwadi Municipality was levying tolls on vehicles or animals on 28.7.1948 on which date the Bombay Motor Vehicles Tax Act was deemed to have come into operation in the Sawantwadi State area, section 9(1) will not be available to the Sawantwadi Municipality to claim compensation under that provision. It is admitted that under a notification issued by the Sawantwadi Darbar under the Motor Vehicles Tax Act, as it was then applicable to the State, the Sawantwadi Municipality was prohibited from levying any toll on vehicles or animals. It would, therefore, follow that the Sawantwadi Municipality was not levying

any toll k on vehicles or animals at the commen. of the Bombay Motor Vehicles Tax Act in the Sawantwadi State area. The question of fixing the period for computing the compensation under the concluding part of section 9(1) would not, therefore, arise. Strictly speaking, the Sawantwadi Municipality would not be entitled to any compensation under section 9(1). This is likely to prove a great hardship to the Sawantwadi Municipality. Government may, therefore, amend the provisions of section 9 (1) of the Bombay Motor Vehicles Act as applied tok the Sawantwadi State area by resorting to para. 11 of the Indian States (Application of Laws) Order.

Sd/- P.M.Lad.
1-3.
Remembrancer of Legal Affairs.

U.N. to H.& L.C.D. No. 2496 , dated 4th March 1949.

V.M.D./5-6
4c.

Legal Department.

The Bombay Motor Vehicles Tax Act, 1935, has been enacted for the purpose of imposing a tax on motor vehicles. Section 10 provides that if the tax is not paid in time, the defaulter is liable to pay fine on being convicted in a Court of Law. If therefore a person does not pay the fine which has been imposed on him he is liable to imprisonment under section 67 of the Indian Penal Code. The section also provides that the tax is recoverable as if it were a fine. No penalty for imprisonment can be imposed for a failure to pay such tax. But the Act itself provides two modes of recovery- (1) as if it was a fine and (2) under sectionx 11 as an arrear of land revenue. Section 386 of the Criminal Procedure Code provides the method for the recovery of a fine. This provision can be resorted to for the recovery of the taxx after the conviction of the defaulter. Moreover under section 7A which was added by Bombay Act V of 1949 the tax can b be recovered from persons to whom the vehicle is transferred. These provisions are adequate for the recovery of the tax. Ordinarily no taxing enactment provides the sentence of imprisonment for the recovery of a tax. Such provisions are inserted in exceptional cases. It is not likely that the Legislature will consent to such change in the Act. The suggestion made by the Provincial Transport Officer is not proper and should not be accepted.

Sd/- J.N.Dharandar.
6-8
Additional Secretary to Government.

U.R. to H.D. 20. 8923 , dated the 6th August 1949.

V.M.D./6-5
4c.

Bombay Motor Vehicles Tax Act, 1935.

Sections 6 and 7 Whether additional tax can be recovered in respect of permitted overloads.

Sections 6, sub-section (2) of the Bombay Motor Vehicles Tax Act, 1935, provides that when a motor vehicle used or kept for use is altered or is proposed to be used in such manner as to render the registered owner or person who has been in possession or control of such vehicle liable to the payment of an additional tax under section 7, such owner or person shall fill up sign an additional declaration in the prescribed form showing the nature of the alteration made or such use, etc.

Under section 7 when any motor vehicle in respect of which a tax has been paid is latered or proposed to be used in such manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable the registered owner or person who is inpossession or control of such vehicle shall pay an additional tax,etc.

The words "proposed to be used" in section 7 were inserted by Bombay Act 46 of 1947, but neither in rule 7 of the Bombay Motor Vehicles Tax Rules, 1940, nor in form "BT" prescribed under section 6, sub-section (2), the consequential amendments were carried out. Rule 7 as it stands relates only to the alterations made to the vehicle. So also does the form BT. However the absence of consequential amendments either in rule 7 or in form BT may not affect the liability to pay an additional tax provided it is proved that the vehicle has been used in such manner as to cause it to become a vehicle &xmator in respect of which a higher rate of tax is payable. A motor vehicle plying for hire falls under Schedule I clause IV and if for instance such a vehicle is taxed as vehicle plying for carrying fam four passengers and is later on used for carrying more than four passengers it would certainly be

deemed to be used insuch manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable within the meaning of section 7. It may however be noted that the tax payable by a motor vehicl falling under Schedule I, clause IV varies according to the number of passengers licenced to carry. In the present case, no doubt, the vehicles were used for carrying more passengers than they were licenced to carr in respect of which they had paid tax, and they would have been ordinarily liable to pay the higher tax under section 7 but the authority to carry more passengers than they were licenced to do was given by Government under the executive order without in any way amending the licence. Consequently, these vehicles could not be deemed to have been licenced to carry more passenge If so, these vehicles could not, strictly speaking, be liable to pay a higher tax under section 7 read with Schedule I, clause IV.

Sd/- P.M.Lad
2-22

Remembrancer of Legal Affairs.

U.R. to H.D. No. 18974, dated the 3rd December 1949.

V.M.D./5-6
4c.